IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Notice of Motion no.883 of 2007
In
Appeal (L) No.161 of 2007
In
Notice of Motion No.72 of 2005
In
Petition No.757 of 2004

Burjor Shiavax Shroff. .. Appellant
(Org.Petitioner)

Vs.

Behram Jamshed Mistry. .. Respondent
(Org.respondent)

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Shri K.R.Parekh for the applicant/appellant.

Shri Behram Jamshed Mistry, respondent in person.

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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 4TH JUNE, 2007

P.C.

1. Heard. This is a notice of motion taken out by the appellant for condonation of delay of 218 days in filing the present appeal against the order dated 21st July, 2006 passed by the probate court. It is the contention on behalf of the applicant that after passing the impugned order, the applicant filed an application for review which was also dismissed and therefore, the present appeal was filed.

2. The records disclose that the order sought to be challenged in this appeal was passed on 21st July, 2006. The review application was filed on 26th September, 2006 and the same was dismissed on 14th December, 2006. The appeal was filed on 26th February, 2007. The only explanation which was given for condonation of delay was for that of the change of lawyer to represent the party. It is pertinent to note that the applicant has not disclosed the date of the application for certified copy as well as the date on which the certified copy was collected by the applicant. Undisputedly, such certified copy was collected prior to 26th September, 2006 i.e. prior to the day when the review application was filed. Even after dismissal of the said review application on 14th December, 2006, the applicant did not bother to file an appeal for a period of two months. Having spent so much time, the applicant has not disclosed any cause for delay in filing the present appeal, leave aside the sufficient cause. Mere change of advocate cannot be said to be a sufficient cause for condonation of delay.

3. In the absence of sufficient cause being shown for condonation of delay of 218 days in filing the

present appeal, the question of condonation of such a long delay does not arise. Hence, valuable right has been accrued in favour of the respondents from 14th December, 2006 and the same cannot be denied without a sufficient cause is shown by the appellant for condonation of delay. Hence, the notice of motion is dismissed. Consequently, the Appeal (L) No.161 of 2007 also stands dismissed.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)